

Exhibit A



REPUBLICAN PARTY
— ★ ★ ★ ★ ★ —
OF ARIZONA

ARIZONA REPUBLICAN PRESIDENTIAL ELECTORS CONVENE TO CAST VOTES FOR PRESIDENT TRUMP, VICE PRESIDENT PENCE

PHOENIX — As the legal proceedings arising from the November 3 presidential election continue to work their way through our nation's judicial system, the Arizona Republicans who pledged to choose President Trump and Vice President Pence in the Electoral College convened on December 14 to cast their votes and send them to Congress where they are to be opened and counted beginning on January 6.

Of course, there is precedent for our Republican electors meeting on December 14, even as the Democrat electors for Arizona also meet elsewhere.

Democrat electors pledged to John F. Kennedy convened in Hawaii in 1960, at the same time as Republican electors met, even though the Governor had certified Richard Nixon as the winner. In the end, Hawaii's electoral votes were awarded to President Kennedy, even though he did not win the state until 11 days after his electors cast their votes.



REPUBLICAN PARTY — ★ ★ ★ ★ ★ — OF ARIZONA

The legitimacy and good sense of two sets of electors meeting on December 14 to cast competing votes for President and Vice President, with the conflict to be later sorted out by the courts and Congress, was pointed out by prominent Democrat lawyers Van Jones and Larry Lessig in an essay published last month on CNN.com.

Given that the results in Arizona remain in doubt, with legal arguments still to be decided, just as the Democrat electors met in Hawaii in 1960 while awaiting a final resolution of that state's vote, so too the Republican electors have agreed to meet this year on December 14 as we await a final resolution of Arizona's 11 electoral votes.

Republican Party of Arizona Chairwoman Kelli Ward released the following statement:

"Today, Arizona's 11 Republican presidential electors met to cast their votes for President Donald Trump and Vice President Mike Pence. With ongoing legal challenges to the 2020 presidential election still being heard in the courts, and state legislatures across the country holding hearings on election fraud and voting irregularities, it is imperative that the proper electors are counted by Congress."



AZ.GOP

Exhibit B

STATE OF ARIZONA

ARIZONA PRESIDENTIAL ELECTOR OFFICIAL BALLOT FOR PRESIDENT OF THE UNITED STATES

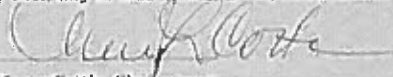
I hereby cast my vote for Donald J. Trump
for President of the United States.


Signed _____




Anthony T. Kern


IN WITNESS WHEREOF, we, the undersigned, have herunto, in the City of
Phoenix, in the State of Arizona, on this 14th day of December, 2020, subscribed our
respective names.


Nancy Cottle, Chairperson


Lorraine B. Pellegrino, Secretary

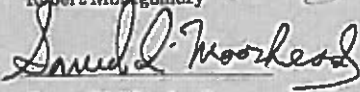

Tyler Bowyer

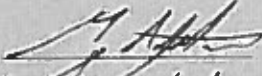

Jake Hallman

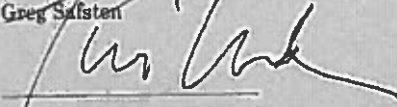

Anthony E. Kern


James Lamon


Robert Montgomery


Samuel I. Moorhead


Greg Safsten


Dr. Kelli Ward

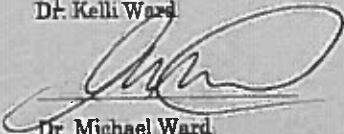

Dr. Michael Ward

Exhibit C

Howard Kleinhendler*
369 Lexington Ave. 12th Floor
New York, New York 10017
Telephone: (917) 793-1188
howard@kleinhendler.com

*Pro Hac Vice Application Forthcoming

Alexander Michael del Rey Kolodin (030826)
Christopher Alfredo Viskovic (035860)
KOLODIN LAW GROUP PLLC
3443 N. Central Ave. Ste 1009
Phoenix, AZ 85012
Telephone: (602) 730-2985
Facsimile: (602) 801-2539
Email:
alexander.kolodin@kolodinlaw.com
cviskovic@kolodinlaw.com
satkinson@kolodinlaw.com (file copies)

Attorneys for Proposed Intervenors
(Additional counsel on signature page)

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

MARICOPA COUNTY, et al.;
Plaintiffs,
v.

Case No. CV2020-016840

KAREN FANN, et al.;
Defendants,

MOTION TO INTERVENE
[REFILED]¹

TYLER BOWYER, NANCY COTTLE, JAKE
HOFFMAN, ANTHONY KERN,
CHRISTOPHER M. KING, JAMES R. LAMON,
SAM MOORHEAD, ROBERT
MONTGOMERY, LORAIN PELLEGRINO,
GREG SAFSTEN, SALVATORE LUKE
SCARMARDO, KELLI WARD, MICHAEL
WARD, MICHAEL JOHN BURKE;
Proposed-Intervenors.

¹ In the initial filing Plaintiffs were designated as Defendants in four places. This has been corrected.

Under Rule 24, individuals and entities may intervene in an action either as of right or with permission of the Court.² Although the two intervention rubrics contemplate different criteria, Arizona courts have long recognized that Rule 24 as a whole “is remedial and should be construed liberally in order to assist parties seeking to obtain justice in protecting their rights.” *Planned Parenthood Ariz., Inc. v. Am. Ass’n of Pro-Life Obstetricians & Gynecologists*, 227 Ariz. 262, 279, ¶ 54 (App. 2011) (internal citations omitted). Despite representing to undersigned counsel in prior litigation that it had a policy of not opposing intervention, Plaintiff Maricopa County has stated they will oppose intervention. Defendant has, to the best of undersigned counsel’s knowledge, not yet appeared nor taken a position on intervention.³

“Intervention of right is appropriate when the party applying for intervention meets all four of the following conditions: (1) the motion must be timely; (2) the applicant must assert an interest relating to the property or transaction which is the subject of the action; (3) the applicant must show that disposition of the action may impair or impede its ability to protect its interest; and (4) the applicant must show that the other parties would not adequately represent its interests.” *Woodbridge Structured Funding, LLC v. Arizona Lottery*, 235 Ariz. 25, 28, ¶ 13 (App. 2014) (citing Ariz. R. Civ. P. 24(a)(2)). Each criterion is met here.

There can be no question this motion is timely as it comes within one judicial day of the filing of Plaintiffs’ complaint.

In addition, Intervenors have several interests relating to the subject of the action and disposition of the action may impair or impede their ability to protect those interests. All intervenors are registered Arizona voters and citizens of Arizona. Intervenors also include the following categories of persons (there is significant overlap):

*. The Arizona Republican Party’s complete slate of nominees for the office of

² Pursuant to Rule 24(c), the Proposed Intervenors have attached a copy of their Proposed Answer-In-Intervention as Exhibit 1.

³ Since this Motion was originally filed undersigned counsel has been informed that at least some Defendants intend to oppose all intervention.

1 presidential elector (the "Republican Electors").

2 *. The chairwoman and executive director of the Arizona Republican party,
3 chairmen of the Republican Party in various counties (as well as other Republican
4 leadership), and Republican elected officials.

5 *. Both an incoming and outgoing member of the Arizona State House.

6 *. Plaintiffs in prior election-related litigation.

7 Intervenor's interests in the litigation track these categories.⁴

8 Plaintiffs' Complaint recognizes that the Republican Electors have an obvious
9 interest in any investigation into whether they were improperly deprived of recognition as
10 Arizona's true electors, especially one which may lead to further legislative action on their
11 behalf at either at the state or federal level. The only way the Republican Electors can
12 protect this interest is by helping to ensure that the state legislature gets all of the
13 information it needs to conduct a full and thorough investigation.

14 Plaintiffs' Complaint also claims that it is illegal for the County to disclose certain
15 categories of public records, which the County has historically been available to
16 Republican Party officials, elected officials, and candidates to help them more effectively
17 register voters and target political advertising. Accordingly, Intervenor's have an interest
18 ensuring that they continue to have access to this information. An adverse ruling now, if
19 upheld on appeal, could establish precedent that could prevent them from gaining access
20 to such information during future election cycles. Since public records are available upon
21 request to any citizen of Arizona, all Intervenor's also have an interest in ensuring that the
22 scope of Arizona public records law is not constrained through an adverse ruling in this
23 litigation.

24 Intervenor's who are members of the Arizona State House have several additional
25 interests in this litigation. Firstly, since the House has the same subpoena power as the
26 Senate, they have an interest in ensuring that legislative subpoenas are complied with.
27 Secondly, Plaintiff has sought to quash the Senate's subpoena on the basis that its members

28 ⁴ The list of interests set forth in this brief is intended to be by way of example and not limitation.

1 failed to comply with that body's internal rules for issuing subpoena. Intervenor have an
2 interest in ensuring that courts continue to treat disputes concerning their compliance with
3 their legislative body's internal rules as nonjusticiable political questions and in avoiding
4 a ruling which could create chaos by conferring on outside persons standing to challenge
5 their compliance with the House's internal rules. Plaintiffs also seek to import a common-
6 law rule from California constraining the situations in which legislators may issue
7 subpoenas. Intervenor have an interest in preventing such a rule from taking hold in
8 Arizona courts. Finally, Representative Kern has an interest in advancing the goals of the
9 "Joint Resolution" mentioned in Plaintiffs' Complaint that he and ten other legislators
10 jointly signed. These goals include a full audit of the election results which compliance
11 with the subpoena will help facilitate.

12 Third, Intervenor were all Plaintiffs in *Bowyer v Ducey*. In that case, they sought
13 injunctive relief requiring Defendant-Intervenor Maricopa County to turn over many of the
14 same types of evidence that the Legislature's subpoena seeks. One of Maricopa County's
15 defenses in that action was that being required to produce such materials would cause them
16 irreparable harm as the County needed to have them available to produce them to the
17 Legislature. Intervenor therefore have an interest in ensuring that Plaintiffs cannot now
18 evade the cause of transparency in this action by playing both sides against the middle.

19 Finally, the other parties to this action would not adequately represent Intervenor's
20 interests. The Republican Electors are uniquely interested in being recognized as Arizona's
21 true electors. In addition, Defendants cannot be expected to have as a primary goal
22 Republican officials' or candidates' continued access to the data they use to register voters
23 and assist Republican candidates. Finally, not all Defendants are Republicans and the more
24 leftward members of that group can be expected to slide with Plaintiffs.

25 Alternatively, for similar reasons, permissive intervention is appropriate as to those
26 Intervenor who are Republican Party officials as well as Representatives Kern and
27 Hoffman pursuant to ARCP 24(a) and is additionally appropriate as to Representatives
28 Kern and Hoffman pursuant to ARCP 24(b)(2).

I. The Proposed Intervenor.

Each of the following Intervenor are registered Arizona voters and nominees of the Republican Party to be a Presidential Elector on behalf of the State of Arizona: Tyler Bowyer, a resident of Maricopa County and a Republican National Committeeman; Nancy Cottle, a resident of Maricopa County and Second Vice-Chairman of the Maricopa County Republican Committee; Jake Hoffman, a resident of Maricopa County and member-elect of the Arizona House of Representatives; Anthony Kern, a resident of Maricopa County and a member of the Arizona House of Representatives; James R. Lamon, a resident of Maricopa County; Samuel Moorhead, a resident of Gila County; Robert Montgomery, a resident of Cochise County and Republican Party Chairman for Cochise County; Loraine Pellegrino, a resident of Maricopa County; Greg Safsten, a resident of Maricopa County and Executive Director of the Republican Party of Arizona; Kelli Ward, a resident of Mohave County and Chair of the Arizona Republican Party; and Michael Ward, a resident of Mohave County. The constitutes the full slate of the Arizona Republican party's nominees for presidential electors (the "Republican Electors").

In addition to the above named Intervenor, there are three additional Intervenor. All are registered Arizona voters and Republican party officials in Arizona: Michael John Burke, a resident of Pinal County and Republican Party Chairman for Pinal County; Christopher M. King, a resident of Pima County and Republican Party Vice Chairman of Pima County; and Salvatore Luke Scarmardo, a resident of Mohave County and Republican Party Chairman for Mohave County.

II. The Proposed Intervenor May Intervene as of Right.

"Intervention of right is appropriate when the party applying for intervention meets all four of the following conditions: (1) the motion must be timely; (2) the applicant must assert an interest relating to the property or transaction which is the subject of the action; (3) the applicant must show that disposition of the action may impair or impede its ability to protect its interest; and (4) the applicant must show that the other parties would not adequately represent its interests." *Woodbridge Structured Funding, LLC v. Arizona*

Lottery, 235 Ariz. 25, 28, ¶ 13 (App. 2014) (citing Ariz. R. Civ. P. 24(a)(2)).⁵ Each criterion is met here.

A. The Motion to Intervene is Timely.

The timeliness of this Motion is not subject to reasonable dispute. By moving within one judicial day of the commencement of this action, prior to any hearing or substantive dispositions by the Court, and before Defendants have appeared, the Proposed Intervenor have acted with reasonable, if not extraordinary, celerity in vindicating their protected interests. Courts have routinely found intervention timely when sought much later than Proposed Intervenor have here.⁶ The result should be no different in this case.

B. The Proposed Intervenor Have Multiple Interests in the Subject of the Litigation and Disposition of the Action in their Absence May Impede Their Abilities to Protect those Interests.

Given that so many of the allegations in its Complaint concern Intervenor, Plaintiff Maricopa County cannot reasonably deny that Intervenor have an interest in this litigation. Even if some Intervenor lack standing to bring a claim that the Arizona Legislature is entitled to have its subpoena enforced, this is no impediment to their entitlement to participate in this action as intervenors. The “interest” sufficient for intervention as of right can be substantially more generalized and diffuse than the concrete “injury” required for standing, *see Perry v. Schwarzenegger*, 630 F.3d 898, 906 (9th Cir. 2011) (“In general, an applicant for intervention need not establish . . . standing to intervene.”). Rather, the “interest” requirement is satisfied by establishing “that the interest is protectable under

⁵ Because Federal Rule of Civil Procedure 24 is “substantively indistinguishable” from its state law analogue, Arizona courts “may look for guidance to federal courts’ interpretations of their rules.” *Heritage Village II Homeowners Ass’n v. Norman*, 246 Ariz. 567, 572, ¶ 19 (App. 2019).

⁶ *See, e.g., Heritage Vill. II*, 246 Ariz. at 571-72, ¶ 17 (motion filed five days after applicants became aware that their interests were at risk was timely); *Winner Enterprises, Ltd. v. Superior Court in & for County of Yavapai*, 159 Ariz. 106, 109 (App. 1988) (finding that motion to intervene in “extremely compressed” special action was timely when it was filed thirty days after initiation of lawsuit and 21 days after court entered preliminary injunction); *see also Arakaki v. Cayetano*, 324 F.3d 1078, 1084 (9th Cir. 2003) (“The district court did not abuse its discretion by finding Hoochuli’s motion [to intervene], filed three weeks after the filing of Plaintiffs’ complaint, timely.”); *Citizens for Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893, 897 (9th Cir. 2011) (“Applicants filed their motion to intervene in a timely manner, less than three months after the complaint was filed and less than two weeks after the [defendant] filed its answer to the complaint.”).

some law and that there is a relationship between the legally protected interest and the claims at issue.” *Citizens for Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893, 897 (9th Cir. 2011). However, “[n]o specific legal or equitable interest need be established.” *Id.* “Instead, the ‘interest’ test directs courts to make a ‘practical, threshold inquiry’ and ‘is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.’” *United States v. City of Los Angeles*, 288 F.3d 391, 398 (9th Cir. 2002) (internal citations omitted); *see also Planned Parenthood*, 227 Ariz. at 279, ¶ 57 (holding that healthcare providers’ “liberty of conscience rights” were an interest sufficient to support intervention in litigation challenging abortion-related laws). In addition, Intervenor has interests independent of the Legislature’s ability to enforce its subpoena, which are discussed further below.

i. Interests of Intervenor as Republican Electors

Plaintiffs themselves have alleged that the Republican Electors have a direct interest in the outcome of this litigation. For example, Plaintiffs have alleged that:

The purpose of the subpoena [at issue in this litigation] is to provide the information to counsel for the losing candidate [i.e. President Trump] so that he might attempt to use it to overturn the elections results.

Complaint ¶ 88. Plaintiffs have further alleged that:

The same day as the special meeting by the Senate Judiciary Committee Plus One [which led to the subpoena being issued], members of the Arizona Legislature signed what purported to be a “Joint Resolution.” It requested “that the alternate 11 electoral votes be accepted for Donald J. Trump or to have all electoral votes nullified completely until a full forensic audit can be conducted.” It further “resolved that the United States Congress is not to consider a slate of electors from the State of Arizona until the Legislature deems the election to be final and all irregularities resolved.”

Complaint ¶ 43 (the “Joint Resolution”).

If these allegations are true, then the Republican Electors indisputably⁷ have a strong interest in the outcome of this litigation insofar as Defendant alleges the subpoena was issued for their benefit and to advance the goal of the Joint Resolution in ensuring that their rivals, the Democratic Party's electors, are not considered by Congress.

ii. Interests of Intervenor as Republican Party Officials and Elected Officials

As set forth above, Kelli Ward is the Chairwoman of the Arizona Republican Party, Greg Safsten is the Executive Director of the Arizona Republican Party, and certain other Intervenor are county chairs of the Republican Party or otherwise in leadership positions for the Republican Party. Yet other Intervenor (Kern and Hoffman) are elected officials, specifically current or incoming members of the Arizona House of Representatives.⁸

One of the items sought by the Subpoena, which Plaintiffs allege is confidential by law, is the "personally identifying information for every registered voter in Maricopa County, including their addresses, dates of birth, political party affiliation, whether they voted in the November 3, 2020 general election, and if so, what type of ballot they cast." Complaint ¶ 47 (Plaintiffs find this request so egregious as to necessitate their use of bold font in the original).⁹ However, such information is public record. *See e.g.* A.R.S. §§ 16-161(A), 16-153. As pertains to Intervenor, there is a long history of this type of information being made available to both political parties and campaigns. Republican party officials use such information both to help with voter registration efforts and assist their nominees' efforts to win their election. Both candidates and political parties also use such information to help decide which voters to target advertising to, as well as for other purposes. The current availability of such data allows political candidates and parties to direct political advertising in an extremely granular fashion. Republican party officials and members of the Legislature seeking re-election frequently use this currently-available data

⁷ Under Arizona law, it is actually the Republican Electors, and not President Trump himself, that are candidates for office. A.R.S. § 16-212(A).

⁸ No concession is made that the Republican Electors are not also elected officials.

⁹ Importantly, no data that was sought by the Legislature would in any way reveal how any given voter voted.

to construct mailing campaigns targeting, for example: (i) Independent voters, (ii) over the age of 55 (iii) who cast early ballots, (iv) in at least three of the past four elections (v) located in a particular legislative district. The loss of the ability to do so in the future would represent a fundamental upheaval in the way that campaigns are conducted in Maricopa County. Accordingly, a declaration that such information was protected from disclosure, especially if sustained on appeal, would adversely impact the ability of party officials to do their jobs and elected officials, like Kern and Hoffman, to run their next campaign.

Both candidates and Republican Party officials also have an interest in election transparency and integrity to ensure a level playing field for themselves or their candidates respectively. Intervenors believe that this interest is best served by maximizing the degree of oversight, including legislative oversight, in our elections.

Furthermore, as any Arizonan can make a public records request and all Intervenors are citizens of Arizona. Therefore, all Intervenors also have an interest in ensuring that the scope of Arizona public records law is not curtailed by the decision in this action.

iii. Interests of Intervenors as Members of the Arizona House of Representatives

Representatives Kern and Hoffman are members of the Arizona House of Representatives, which has the same power as the Senate to subpoena the production of documents. *See e.g.* A.R.S. § 41-1154. As such, they have a further interest in making sure that legislative subpoenas are complied with, and not flouted, and would be independently harmed by any precedent weakening the Legislature's subpoena power.

Further, the first count of Plaintiffs' Complaint asks this Court to ascertain whether the Legislature has complied with its own rules in issuing the Subpoena. *See e.g.* Complaint ¶ 66 ("While state law would permit the Senate president to issue subpoenas, the rules of the Senate provide her a more narrow power and by rule the Senate Rules take precedence over statute. Accordingly, the subpoenas were issued in contravention of Senate rule and are of no effect."), *See further* Complaint ¶¶ 62-65. Representatives Kern and Hoffman have an interest in ensuring that whether members of a legislative body have complied with

that body's internal rules remains a non-justiciable political question. *See e.g. Brown v. Hansen* 973 F.2d 1118, 1122 (3d Cir. 1992) ("courts generally refuse to scrutinize a legislature's choice of or compliance with internal rules and procedures."). And they certainly have an interest in avoiding the chaos that would ensue from a finding that persons who are not members of the Legislature, such as Maricopa County, have standing to challenge members' compliance with their body's internal rules.

Additionally, Plaintiffs seek, on the basis of a California Supreme Court decision, to have this Court recognize a severe restriction on the legislature's right to issue subpoenas. Complaint ¶ 59. Particularly, they seek to have the Court declare that legislative subpoenas are proper only if they are authorized by ordinance, serve a valid legislative purpose, and are "pertinent" to the subject matter of an investigation. *Id.* Such a rule, if established, would diminish Representative Kern and Hoffman's subpoena powers as members of the Arizona State Legislature and invite Arizona Courts to make political decisions about what materials are "pertinent" to the members of the legislature such as themselves.

Finally, Representative Kern is a signatory to the "Joint Resolution" discussed in the previous subsection seeking a full legislative audit and for congress not to recognize the Democratic Electors pending the outcome of such an audit. He further seeks to intervene to gain the materials he and his fellow signatories need to conduct such an audit.

iv. Interests of Intervenors as Parties to Bowyer v Ducey and Other Election-Related Litigation

Finally, Plaintiffs point to various election-related lawsuits that have been dismissed this cycle to excuse their compliance with the Subpoena (while concerningly omitting suits in which the County did not prevail). Complaint ¶¶ 31 and 32. As Intervenors were also parties to several of those cases, this highlights their connection to the instant litigation as well as their usefulness in fleshing out what went on in those matters and providing an opposing perspective.¹⁰

¹⁰ For example, Plaintiffs characterize the trial court in *Ward v Jackson Court* as finding "that the evidence did not

More importantly, however, Intervenor were all Plaintiffs in *Bowyer v Ducey*. In that case, Intervenor sought an injunction requiring Maricopa County to produce, among other things, “all servers, software, voting machines, tabulators, printers, portable media, logs, ballot applications, ballot return envelopes, ballot images, paper ballots, and all election materials related to the November 3, 2020 Arizona election s[e]ized and impounded for forensic audit and inspection by the Plaintiffs.” Maricopa County’s Motion to Dismiss (*Boyer v Ducey*) 7:6-11 [Exhibit 2] (quoting Plaintiffs’ Motion for Temporary Restraining Order and Preliminary Injunction).

Maricopa County moved to intervene in that matter (something prior Plaintiffs and current Intervenor) did not oppose. Upon being granted leave to intervene, Maricopa County filed a Motion to Dismiss claiming that it would suffer irreparable harm if the Court were to order such relief for three reasons, one of which was that that:

[M]embers of the legislature, including the chairman of the committee with jurisdiction over election procedures, have requested the County to perform an “election day demonstration” of the County’s voting equipment in early to mid-December in order to determine what changes to Arizona election law, if any, should be considered when the time comes to file bills in early January. The order the Plaintiffs request would frustrate the legislators’ important objective to continue to improve elections and voting in Arizona.

Maricopa County’s Motion to Dismiss (*Boyer v Ducey*) 7:17-23 (emphasis supplied). Yet now that the Legislature has actually sought production of many of these items, the County claims that it has done so for “no valid legislative purpose[.]” Complaint ¶ 74, and that continued fact-finding which may lead to legislation being introduced in the near future does not constitute an investigation because “no votes were taken and no follow up meeting was set” Complaint ¶ 86. Further, the County seeks to slow-play this production, past the beginning of session and past date Congress is scheduled to meet to consider the electors,

show . . . an erroneous vote count.” Complaint 7:2-3. However, the trial court in that case actually found that, to the contrary, there were “mistakes” in the vote count. December 4, 2020 Minute Entry Ruling (*Ward v Jackson*) p 8. <https://www.clerkofcourt.maricopa.gov/Home/ShowDocument?id=1930>.

1 by seeking to have this case designated as a “tier three” matter. Complaint ¶ 13.

2 In other words, Maricopa County (successfully) sought dismissal of Intervenor’s
 3 claims in previous litigation, in part by admonishing them that the appropriate path to
 4 investigation and reform ran through the Legislature, to whom the County was so eager to
 5 produce the items that Intervenor’s sought that it alleged it would suffer irreparable harm
 6 by depriving the Legislature of those items by turning them over to Intervenor’s. Now, after
 7 Intervenor’s and many others have successfully pushed for the Legislature to formally
 8 subpoena these items in aid of its own investigation, Maricopa County claims that these
 9 items were only available through an election challenge. Complaint ¶ 81; *See also*,
 10 Complaint ¶ 82 (“No law provides the Legislature the power to act as a ‘Court Above the
 11 Supreme Court,’ to hold its own investigation of an election[.]”). What Plaintiffs seek, in
 12 actuality, is a world in which they can use the Legislature as an excuse not to produce
 13 evidence to parties like Intervenor’s and parties like Intervenor’s as an excuse not to produce
 14 evidence to the Legislature. Among the reasons that Intervenor’s seek to be included in this
 15 litigation to prevent both sides from being played against one another in this fashion to
 16 defeat the cause of transparency and election integrity.

17 In addition, *Boyer v Ducey* is currently on appeal. One of the types of relief that
 18 Intervenor’s requested as Plaintiffs in that matter was that the Legislature be permitted to
 19 designate Arizona’s electors, instead of merely accepting the slate certified by Hobbs.
 20 Insofar as the considerations of time are pressing before Congress meets, Intervenor’s have
 21 a keen interest in any attempts by the Legislature to obtain the information it needs to make
 22 an informed decision as to what electors are most appropriate for it to pick.

23 **D. No Current Party Adequately Represents Intervenor’s Interests**

24 Intervenor’s independent interests will not be fully and adequately represented by
 25 either the Plaintiffs or the Defendants in this action.

26 As an initial matter, Intervenor’s are directly opposed to Plaintiffs. Plaintiffs are
 27 seeking to quash the very subpoena that Intervenor’s wish to see upheld.

28 In addition, the Legislature cannot be expected to have as its primary concern

representing the interests of the Republican Electors in investigating the propriety of their supposed defeat. Nor can it be expected to have as a primary focus the protection of Republican officials' continued access to data sources so they can continue to support Republican candidates. *See, e.g., Maricopa County Republican Party et al. v. Reagan et al.*, No. CV2018-013963 (Maricopa Cty. Super. Ct. Nov. 9, 2018) (granting intervention to political parties and other interested political actors in election dispute); *Mi Familia Vota v. Hobbs*, No. 20-cv-01093 (D. Ariz. Oct. 2, 2020) (granting intervention to political party in election dispute); *see also Issa v. Newsom*, No. 2:20-cv-01044-MCE-CKD, 2020 WL 3074351, at *4 (E.D. Cal. June 10, 2020) ("While [government] Defendants' arguments turn on their inherent authority as state executives and their responsibility to properly administer election laws, Proposed [political party] Intervenors are concerned with ensuring their party members and the voters they represent have the opportunity to vote in the upcoming federal election, advancing their overall electoral prospects, and allocating their limited resources to inform voters about the election procedures."). Nor, by way of further example, will all Defendants necessarily share Representative Kern's desire to advance the goals of the Joint Resolution as not all defendants are signatories to the Joint Resolution. Indeed, some Defendants may actually wish for Plaintiffs to prevail (Defendant Quezada, for example, is Democrat and a noted bastion of the Legislature's left wing).

Finally, Maricopa County is a political subdivision of the state making both Plaintiff and Defendants essentially different branches of the same organization. Adequate representation of non-state actors necessitates their involvement. A failure to vigorously oppose Plaintiff's Complaint would leave Intervenors and the Arizona Legislature no remedy in this or future actions relating to elections, something that this court should find abhorrent under Arizona's Constitution.

III. In the Alternative, Permissive Intervention is Appropriate Because of the Proposed Intervenors' Interest in the Proceedings, the Procedural Posture of the litigation, and the Absence of any Prejudice to any Existing Party as a Consequence of their Intervention.

Alternatively, Intervenor Hoffman, Kern, Bowyer, Cottle, Montgomery, Safsten, Kelli Ward, Burke, King, and Scarmardo should be granted permissive intervention. If the Court finds that one or more of the prerequisites for intervention as of right remain unsatisfied, Rule 24(b) supplies an independent basis for Proposed Intervenor's permissible intervention.¹¹ The Court may allow permissive intervention when the applicant "has a claim or defense that shares with the main action a common question of law or fact." Ariz. R. Civ. P. 24(b)(1)(B). As with Rule 24(a), Rule 24(b) should similarly be liberally construed. *Dowling v. Stapley*, 221 Ariz. 251, 272 ¶ 67 (App. 2009) (citing *Bechtel v. Rose*, 150 Ariz. 68, 72 (1986)).

Representatives Kern and Hoffman, as members of the Arizona legislature interested in seeing that body's subpoena enforced, share the defenses of their colleagues who have been named as Defendants in this action and their grounds for asserting those (expected) defenses.

Additionally, as concerns representatives Kern and Hoffman, intervention is appropriate under ARCP 24(b)(2), which provides that: "On timely motion, the court may permit a state governmental officer or agency to intervene if a party's claim or defense is based on: (A) a statute administered by the officer or agency; or (B) any regulation, order, requirement, or agreement issued or made under a statute administered by the officer or agency." The present action is based on a subpoena issued pursuant to A.R.S. § 41-1154, etc., which was drafted by, and is administered by, the legislature and its members.

Meanwhile, those Intervenor who are Republican party officials share similar defenses to those of the Defendants when it comes to whether the voter information that they have relied on for many years is, in fact, protected from disclosure. Namely, that such information is already, by law, in the public domain.

CONCLUSION

While they reserve the right to invoke any and all legal arguments, claims or

¹¹ As discussed previously, this Motion is undisputedly timely, which is a prerequisite to any variant of permissive intervention.

1 crossclaims that may bear on the questions in dispute, the Proposed Intervenor
2 prepared to adhere to all deadlines and schedules established by the Court. In sum,
3 permitting the intervention will not impede or encumber the expeditious disposition of this
4 matter; to the contrary, the Proposed Intervenor's joinder will only ensure that the Court's
5 adjudication of the parties' claims and defenses is informed by the perspective interests of
6 all interested participants.

7 Accordingly, for the foregoing reasons, this Court should find the Proposed
8 Intervenor is entitled to intervene as of right, pursuant to Ariz. R. Civ. P. 24(a). In the
9 alternative, the Court should in its discretion permit Proposed Intervenor to intervene,
10 pursuant to Ariz. R. Civ. P. 24(b).

11
12 Respectfully submitted this 21st day of December, 2020

13
14 **KOLODIN LAW GROUP PLLC**

15
16 By /s/Alexander Kolodin

Alexander Kolodin

17 Christopher Alfredo Viskovic

Kolodin Law Group PLLC

18 3443 N. Central Ave. Ste. 1009

19 Phoenix, AZ 85004

20 By /s/Howard Kleinhendler

21 Howard Kleinhendler Esquire*

22 369 Lexington Ave. 12th Floor

New York, New York 10017

23 Telephone: (917) 793-1188

howard@kleinhendler.com

24 *Pro Hac Vice Application Forthcoming

25 Bryan James Blehm, AZ Bar No. 023891

Bryan@BlehmLegal.com

BLEHM LAW PLLC

26 3443 N. Central Ave. Ste. 1009

27 Phoenix, AZ 85012

28 Telephone: (602) 753-6213

KOLODIN LAW GROUP PLLC

3443 North Central Avenue Suite 1009

Phoenix, Arizona 85012

Telephone: (602) 730-2985 / Facsimile: (602) 801-2539

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Emily P. Newman (Virginia Bar No. 84265)*
Julia Z. Haller (D.C. Bar No. 466921)*
Brandon Johnson (D.C. Bar No. 491730)*

2911 Turtle Creek Blvd. Suite 300
Dallas, Texas 75219

L. Lin Wood (Georgia Bar No. 774588)*
L. LIN WOOD, P.C.
P.O. Box 52584
Atlanta, GA 30305-0584
Telephone: (404) 891-1402

*Application for admission pro hac vice forthcoming

Exhibit 1

Howard Kleinhendler Esquire*
369 Lexington Ave. 12th Floor
New York, New York 10017
Telephone: (917) 793-1188
howard@kleinhendler.com

**Pro Hac Vice Application Forthcoming*

Alexander Michael del Rey Kolodin (030826)
Christopher Alfredo Viskovic (035860)
KOLODIN LAW GROUP PLLC
3443 N. Central Ave. Ste 1009
Phoenix, AZ 85012
Telephone: (602) 730-2985
Facsimile: (602) 801-2539
alexander.kolodin@kolodinlaw.com
cviskovic@kolodinlaw.com
satkinson@kolodinlaw.com (file copies)

Attorneys for Third-Party Intervenors
(Additional counsel listed on signature page)

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

MARICOPA COUNTY; et al.,

Plaintiffs,

v.

KAREN FANN, et al.,

Defendants,

TYLER BOWYER, NANCY COTTLE, JAKE
HOFFMAN, ANTHONY KERN,
CHRISTOPHER M. KING, JAMES R. LAMON,
SAM MOORHEAD, ROBERT MONTGOMERY,
LORAIN PELLEGRINO, GREG SAFSTEN,
SALVATORE LUKE SCARMARDO, KELLI
WARD, MICHAEL WARD;

Proposed-Intervenors.

Case No. CV2020-016840

**[PROPOSED ANSWER] TO
PLAINTIFFS' COMPLAINT**

Intervenor-Defendants Tyler Bowyer, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M. King, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, and Michael Ward ("Intervenors"), through its undersigned counsel, answers the Complaint filed by Plaintiffs as follows:

1. Intervenors lack sufficient information to confirm or deny the allegations in Paragraph 1 and therefore denies the same.

2. Intervenors admit the allegation in sentence 1 of Paragraph 2. Intervenors lack sufficient information to confirm or deny the allegations in sentence 2 of Paragraph 2 and therefore denies the same.

3. Intervenors lack sufficient information to confirm or deny the allegations in Paragraph 3 and therefore denies the same.

4. The allegations in Paragraph 4 are a characterization of Plaintiffs' cause of action and legal contentions and conclusions, to which no response is required. To the extent a response is required, Intervenors deny the allegations in Paragraph 4.

5. Intervenors deny the allegations in Paragraph 5 in that the subpoena also requests additional items.

6. Intervenors admit the allegations in Paragraph 6.

7. Intervenors admit the allegations in Paragraph 7.

8. Intervenors deny the allegations in Paragraph 8.

9. Paragraph 9 is a summary of the relief that Plaintiffs are seeking, to the extent a response is required, Intervenors deny the allegations in Paragraph 9.

JURISDICTION AND VENUE

10. The allegations in Paragraph 10 state legal conclusions for which no response is required, to the extent a response is required, Intervenors deny the allegations in Paragraph 10.

11. The allegations in Paragraph 11 state legal conclusions for which no response is required, to the extent a response is required, Intervenor deny the allegations in Paragraph 11.

12. Intervenor lack sufficient information to confirm or deny the allegations in Paragraph 12 and therefore denies the same.

13. Intervenor deny the allegations in Paragraph 13.

PARTIES

14. Intervenor admit the allegations in Paragraph 14.

15. Intervenor admit the allegations in Paragraph 15.

16. Intervenor admit the allegations in Paragraph 16.

17. Intervenor admit the allegations in Paragraph 17.

18. Intervenor admit the allegations in Paragraph 18.

19. Intervenor admit the allegations in Paragraph 19.

20. Intervenor admit the allegations in Paragraph 20.

21. Intervenor admit the allegations in Paragraph 21.

22. Intervenor admit the allegations in Paragraph 22.

23. Intervenor admit the allegations in Paragraph 23.

24. Intervenor admit the allegations in Paragraph 24.

25. Intervenor admit the allegations in Paragraph 25.

26. Intervenor admit the allegations in Paragraph 26.

27. Intervenor admit the allegations in Paragraph 27.

FACTS

28. Intervenor admit the allegations in Paragraph 28.

29. Intervenor lack sufficient information to confirm or deny the allegations in Paragraph 29 and therefore denies the same.

30. Intervenor deny the allegations in Paragraph 30 as to characterizations, no dispute that there has been previous election litigation.

1 31. Intervenors deny the allegations in Paragraph 31 as to characterizations, no
2 dispute these cases were filed.

3 32. Intervenors deny the allegations in Paragraph 32 as to characterizations, no
4 dispute these cases were filed.

5 33. Intervenors deny the allegations in Paragraph 33 as to characterizations, no
6 dispute these cases were filed.

7 34. Intervenors lack sufficient information to confirm or deny the allegations in
8 Paragraph 34 and therefore denies the same.

9 35. Intervenors lack sufficient information to confirm or deny the allegations in
10 Paragraph 35 and therefore denies the same.

11 36. Intervenors lack sufficient information to confirm or deny the allegations in
12 Paragraph 36 and therefore denies the same.

13 37. Intervenors lack sufficient information to confirm or deny the allegations in
14 Paragraph 37 and therefore denies the same.

15 38. Intervenors lack sufficient information to confirm or deny the allegations in
16 Paragraph 38 and therefore denies the same.

17 39. Intervenors lack sufficient information to confirm or deny the allegations in
18 Paragraph 39 and therefore denies the same.

19 40. Intervenors lack sufficient information to confirm or deny the allegations in
20 Paragraph 40 and therefore denies the same.

21 41. Intervenors lack sufficient information to confirm or deny the allegations in
22 Paragraph 41 and therefore denies the same

23 42. Intervenors lack sufficient information to confirm or deny the allegations in
24 Paragraph 42 and therefore denies the same.

25 43. Intervenors admit the allegations in Paragraph 43.

26 44. Intervenors admit the allegations in Paragraph 44.

27 45. Intervenors lack sufficient information to confirm or deny the allegations in
28 Paragraph 45 and therefore denies the same.

1 46. Intervenor's admit the allegations in Paragraph 46.

2 47. Intervenor's admit the allegations in Paragraph 47.

3 48. Intervenor's lack sufficient information to confirm or deny the allegations in
4 Paragraph 48 and therefore denies the same.

5 49. Intervenor's lack sufficient information to confirm or deny the allegations in
6 Paragraph 49 and therefore denies the same.

7 50. Intervenor's lack sufficient information to confirm or deny the allegations in
8 Paragraph 50 and therefore denies the same.

9 51. Intervenor's lack sufficient information to confirm or deny the allegations in
10 Paragraph 51 and therefore denies the same.

11 52. Intervenor's lack sufficient information to confirm or deny the allegations in
12 Paragraph 52 and therefore denies the same.

13 53. Intervenor's admit the allegations in Paragraph 53.

14 54. Intervenor's lack sufficient information to confirm or deny the allegations in
15 Paragraph 54 and therefore denies the same.

16 55. Intervenor's lack sufficient information to confirm or deny the allegations in
17 Paragraph 55 and therefore denies the same.

18 56. Intervenor's lack sufficient information to confirm or deny the allegations in
19 Paragraph 56 and therefore denies the same.

20 **COUNT I**

21 57. Intervenor's hereby incorporate their responses to previous allegations.

22 58. The allegations in Paragraph 58 state legal conclusions for which no response is
23 required, to the extent a response is required, Intervenor's deny the allegations in Paragraph
24 58.

25 59. The allegations in Paragraph 59 state legal conclusions for which no response is
26 required, to the extent a response is required, Intervenor's deny the allegations in Paragraph
27 59.
28

1 60. The allegations in Paragraph 60 are a characterization of Plaintiffs' cause of
2 action and legal contentions and conclusions, to which no response is required. To the
3 extent a response is required, Intervenor deny the allegations in Paragraph 60.

4 61. The allegations in Paragraph 61 are a characterization of Plaintiffs' cause of
5 action and legal contentions and conclusions, to which no response is required. To the
6 extent a response is required, Intervenor deny the allegations in Paragraph 61.

7 62. The allegations in Paragraph 62 are a characterization of Plaintiffs' cause of
8 action and legal contentions and conclusions, to which no response is required. To the
9 extent a response is required, Intervenor deny the allegations in Paragraph 62.

10 63. Intervenor lack sufficient information to confirm or deny the allegations in
11 Paragraph 63 and therefore denies the same.

12 64. The allegations in Paragraph 64 are a characterization of Plaintiffs' cause of
13 action and legal contentions and conclusions, to which no response is required. To the
14 extent a response is required, Intervenor deny the allegations in Paragraph 64.

15 65. The allegations in Paragraph 65 are a characterization of Plaintiffs' cause of
16 action and legal contentions and conclusions, to which no response is required. To the
17 extent a response is required, Intervenor deny the allegations in Paragraph 65.

18 66. The allegations in Paragraph 66 are a characterization of Plaintiffs' cause of
19 action and legal contentions and conclusions, to which no response is required. To the
20 extent a response is required, Intervenor deny the allegations in Paragraph 66.

21 67. The allegations in Paragraph 67 state legal conclusions for which no response is
22 required.

23 68. Intervenor lack sufficient information to confirm or deny the allegations in
24 Paragraph 68 and therefore denies the same.

25 69. The allegations in Paragraph 69 are a characterization of Plaintiffs' cause of
26 action and legal contentions and conclusions, to which no response is required. To the
27 extent a response is required, Intervenor deny the allegations in Paragraph 69.

28

1 70. The allegations in Paragraph 70 are a characterization of Plaintiffs' cause of
2 action and legal contentions and conclusions, to which no response is required. To the
3 extent a response is required, Intervenor deny the allegations in Paragraph 70. No dispute
4 that selective quotes from statute are accurate.

5 71. The allegations in Paragraph 71 are a characterization of Plaintiffs' cause of
6 action and legal contentions and conclusions, to which no response is required. To the
7 extent a response is required, Intervenor deny the allegations in Paragraph 71.

8 72. The allegations in Paragraph 72 are a characterization of Plaintiffs' cause of
9 action and legal contentions and conclusions, to which no response is required. To the
10 extent a response is required, Intervenor deny the allegations in Paragraph 72.

11 73. The allegations in Paragraph 73 are a characterization of Plaintiffs' cause of
12 action and legal contentions and conclusions, to which no response is required. To the
13 extent a response is required, Intervenor deny the allegations in Paragraph 73.

14 74. The allegations in Paragraph 74 are a characterization of Plaintiffs' cause of
15 action and legal contentions and conclusions, to which no response is required. To the
16 extent a response is required, Intervenor deny the allegations in Paragraph 74.

17 75. The allegations in Paragraph 75 state legal conclusions for which no response is
18 required, to the extent a response is required, Intervenor deny the allegations in Paragraph
19 75.

20 76. The allegations in Paragraph 76 state legal conclusions for which no response is
21 required, to the extent a response is required, Intervenor deny the allegations in Paragraph
22 76.

23 77. The allegations in Paragraph 77 state legal conclusions for which no response is
24 required, to the extent a response is required, Intervenor deny the allegations in Paragraph
25 77.

26 78. The allegations in Paragraph 78 state legal conclusions for which no response is
27 required, to the extent a response is required, Intervenor deny the allegations in Paragraph
28 78.

1 79. The allegations in Paragraph 79 are a characterization of Plaintiffs' cause of
2 action and legal contentions and conclusions, to which no response is required. To the
3 extent a response is required, Intervenor deny the allegations in Paragraph 79.

4 80. The allegations in Paragraph 80 are a characterization of Plaintiffs' cause of
5 action and legal contentions and conclusions, to which no response is required. To the
6 extent a response is required, Intervenor deny the allegations in Paragraph 80.

7 81. The allegations in Paragraph 81 are a characterization of Plaintiffs' cause of
8 action and legal contentions and conclusions, to which no response is required. To the
9 extent a response is required, Intervenor deny the allegations in Paragraph 81.

10 82. The allegations in Paragraph 82 are a characterization of Plaintiffs' cause of
11 action and legal contentions and conclusions, to which no response is required. To the
12 extent a response is required, Intervenor deny the allegations in Paragraph 82.

13 83. The allegations in Paragraph 83 are a characterization of Plaintiffs' cause of
14 action and legal contentions and conclusions, to which no response is required. To the
15 extent a response is required, Intervenor deny the allegations in Paragraph 83.

16 84. The allegations in Paragraph 84 are a characterization of Plaintiffs' cause of
17 action and legal contentions and conclusions, to which no response is required. To the
18 extent a response is required, Intervenor deny the allegations in Paragraph 84.

19 85. Intervenor deny the allegations in Paragraph 85.

20 86. Intervenor lack sufficient information to confirm or deny the allegations in
21 Paragraph 86 and therefore denies the same.

22 87. Intervenor lack sufficient information to confirm or deny the allegations in
23 Paragraph 87 and therefore denies the same.

24 88. Intervenor admit the allegations in Paragraph 88.

25 89. The allegations in Paragraph 89 state legal conclusions for which no response is
26 required, to the extent a response is required, Intervenor deny the allegations in Paragraph
27 89.

28 **COUNT II**

100. Intervenors hereby incorporate their responses to previous allegations.

112. Intervenor lack sufficient information to confirm or deny the allegations in Paragraph 112 and therefore denies the same.

113. Intervenor lack sufficient information to confirm or deny the allegations in Paragraph 113 and therefore denies the same.

114. The allegations in Paragraph 114 are a characterization of Plaintiffs' cause of action and legal contentions and conclusions, to which no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 114.

115. The allegations in Paragraph 115 are a characterization of Plaintiffs' cause of action and legal contentions and conclusions, to which no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 115.

116. Intervenor admit the allegations in Paragraph 116.

117. Intervenor deny the allegations in Paragraph 117 as it omits the Electronic Adjudication Addendum to the 2019 Elections Procedures Manual.

118. The allegations in Paragraph 118 state legal conclusions for which no response is required, to the extent a response is required, Intervenor deny the allegations in Paragraph 118.

119. The allegations in Paragraph 119 state legal conclusions for which no response is required.

120. The allegations in Paragraph 120 state legal conclusions for which no response is required.

121. The allegations in Paragraph 121 state legal conclusions for which no response is required.

122. The allegations in Paragraph 122 are a characterization of Plaintiffs' cause of action and legal contentions and conclusions, to which no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 122.

123. The allegations in Paragraph 123 are a characterization of Plaintiffs' cause of action and legal contentions and conclusions, to which no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 123.

1 136. The allegations in Paragraph 136 state legal conclusions for which no response
2 is required.

3 137. The allegations in Paragraph 137 state legal conclusions for which no response
4 is required, to the extent a response is required, Intervenor's deny the allegations in
5 Paragraph 137.

6 138. The allegations in Paragraph 138 are a characterization of Plaintiffs' cause of
7 action and legal contentions and conclusions, to which no response is required. To the
8 extent a response is required, Intervenor's deny the allegations in Paragraph 138.

9 139. Intervenor's deny the allegations in Paragraph 139.

10 140. Intervenor's lack sufficient information to confirm or deny the allegations in
11 Paragraph 140 and therefore denies the same.

12 141. Intervenor's deny the allegations in Paragraph 141.

13 142. The allegations in Paragraph 142 are a characterization of Plaintiffs' cause of
14 action and legal contentions and conclusions, to which no response is required. To the
15 extent a response is required, Intervenor's deny the allegations in Paragraph 142.

16 143. Intervenor's deny the allegations in Paragraph 143.

17 144. The allegations in Paragraph 144 are a characterization of Plaintiffs' cause of
18 action and legal contentions and conclusions, to which no response is required. To the
19 extent a response is required, Intervenor's deny the allegations in Paragraph 144.

20 145. The allegations in Paragraph 145 are a characterization of Plaintiffs' cause of
21 action and legal contentions and conclusions, to which no response is required. To the
22 extent a response is required, Intervenor's deny the allegations in Paragraph 145.

23 146. The allegations in Paragraph 146 are a characterization of Plaintiffs' cause of
24 action and legal contentions and conclusions, to which no response is required. To the
25 extent a response is required, Intervenor's deny the allegations in Paragraph 146.

26 147. Intervenor's deny the allegations in Paragraph 147.

27 148. Intervenor's deny the allegations in Paragraph 148.

28

1 149. Intervenor's lack sufficient information to confirm or deny the allegations in
2 Paragraph 149 and therefore denies the same.

3 150. The allegations in Paragraph 150 are a characterization of Plaintiffs' cause of
4 action and legal contentions and conclusions, to which no response is required. To the
5 extent a response is required, Intervenor's deny the allegations in Paragraph 150.

6 151. Intervenor's lack sufficient information to confirm or deny the allegations in
7 Paragraph 151 and therefore denies the same.

8 152. Intervenor's lack sufficient information to confirm or deny the allegations in
9 Paragraph 152 and therefore denies the same.

10 153. Intervenor's lack sufficient information to confirm or deny the allegations in
11 Paragraph 153 and therefore denies the same.

12 154. The allegations in Paragraph 154 are a characterization of Plaintiffs' cause of
13 action and legal contentions and conclusions, to which no response is required. To the
14 extent a response is required, Intervenor's deny the allegations in Paragraph 154.

15 155. The allegations in Paragraph 155 are a characterization of Plaintiffs' cause of
16 action and legal contentions and conclusions, to which no response is required. To the
17 extent a response is required, Intervenor's deny the allegations in Paragraph 155.

18 **DEFENSES**

19 Third-Party Intervenor's hereby assert the following Defenses:

- 20 1. Plaintiffs have failed to state a claim.
- 21 2. No private right of action exists under the statutes Plaintiffs invoke.
- 22 3. Plaintiffs have not satisfied the requirements for injunctive relief because they have
23 failed to show irreparable injury and they have no likelihood of success on the
24 merits.
- 25 4. Plaintiffs' claims are barred by laches.
- 26 5. Plaintiffs lack standing to pursue their claims.
- 27 6. Plaintiffs' claims are not yet ripe and/or are moot.
- 28 7. All other affirmative defenses under Rule 8(d).

WHEREFORE Intervenor's pray for relief as follows:

1. For this Court to deny all relief.
2. For attorneys' fees and costs pursuant to A.R.S. §§ 12-2030, 12-348, common law doctrine, and other applicable law.

Respectfully submitted this 21st day of December, 2020

KOLODIN LAW GROUP PLLC

Alexander Kolodin
Christopher Alfredo Viskovic
Kolodin Law Group PLLC
3443 N. Central Ave. Ste. 1009
Phoenix, AZ 85004

Howard Kleinhendler Esquire*
369 Lexington Ave. 12th Floor
New York, New York 10017

Bryan J. Blehm, AZ Bar No. 023891
BLEHM LAW PLLC
bryan@blehmlegal.com
3443 N. Central Ave. Ste. 1009
Phoenix, Arizona 85012
Telephone: (602) 384-3183

Of Counsel:
Emily P. Newman (Virginia Bar No. 84265)*
Julia Z. Haller (D.C. Bar No. 466921)*
Brandon Johnson (D.C. Bar No. 491730)*

2911 Turtle Creek Blvd. Suite 300
Dallas, Texas 75219

L. Lin Wood (Georgia Bar No. 774588)*
L. LIN WOOD, P.C.
P.O. Box 52584
Atlanta, GA 30305-0584

KOLODIN LAW GROUP PLLC

3443 North Central Avenue Suite 1009

Phoenix, Arizona 85012

Telephone: (602) 730-2985 / Facsimile: (602) 801-2539

Telephone: (404) 891-1402

*Application for admission pro hac vice Forthcoming

Attorneys for Third-Party Intervenor

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Exhibit 2

1 ALLISTER ADEL
2 MARICOPA COUNTY ATTORNEY

3 Thomas P. Liddy (019384)
4 Emily Craiger (021728)
5 Joseph I. Vigil (018677)
6 Joseph J. Branco (031474)
7 Joseph E. LaRue (031348)
8 Deputy County Attorneys
liddyt@mcao.maricopa.gov
craigere@mcao.maricopa.gov
vigilj@mcao.maricopa.gov
brancoj@mcao.maricopa.gov
laruej@mcao.maricopa.gov

9 CIVIL SERVICES DIVISION
10 225 West Madison Street
11 Phoenix, Arizona 85003
12 Telephone (602) 506-8541
Facsimile (602) 506-4317
ca-civilmailbox@mcao.maricopa.gov
Attorneys for Maricopa County Intervenors

13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT OF ARIZONA**

15
16 Tyler Bowyer, Michael John Burke, Nancy
17 Cottle, Jake Hoffman, Anthony Kern,
18 Christopher M. King, James R. Lamon,
19 Sam Moorhead, Robert Montgomery,
Loraine Pellegrino, Greg Safsten,
Salvatore Luke Scarmardo, Kelli Ward,
and Michael Ward,

20 Plaintiffs,

21 v.

22 Doug Ducey, in his official capacity as
23 Governor of the State of Arizona, and
24 Katie Hobbs, in her official capacity as the
Arizona Secretary of State

25 Defendants.
26
27
28

NO. CV20-02321-PHX-DJH

**MARICOPA COUNTY
INTERVENORS'
MOTION TO DISMISS**

AND

**RESPONSE IN OPPOSITION TO
PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

Pursuant to Federal Rule of Civil Procedure 9(b), the Maricopa County Board of Supervisors and Maricopa County Recorder Adrian Fontes (“Maricopa County Intervenors”) respectfully request that this Court dismiss Plaintiffs’ Complaint with prejudice because it utterly fails to “state with particularity the circumstances constituting fraud.” Because Plaintiffs will not succeed on the merits and fail to raise “serious questions” with their woefully deficient fraud Complaint, this Court should deny the request for a temporary restraining order that would cause irreparable harm to the Maricopa County Intervenors. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (discussing elements for preliminary equitable relief); *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011). The following Memorandum of Points and Authorities supports this Motion.

Memorandum of Points and Authorities

Introduction

Plaintiffs’ Complaint is a textbook example of why Federal Rule of Civil Procedure 9(b) exists. Nearly one month after the November 3, 2020 General Election, this is the best that Plaintiffs could put together: (1) declarations from partisan elections observers that do not allege fraud and are demonstrably confused about Arizona’s voting laws and Maricopa County’s practices, (2) “statistical” reports from “experts” who based their analyses on their subjective expectations of voter behavior, and (3) conspiracy-theory laden, unsigned, redacted declarations making wild accusations about Maricopa County’s elections equipment vendor.

“When an entire complaint, or an entire claim within a complaint, is grounded in fraud and its allegations fail to satisfy the heightened pleading requirements of Rule 9(b), a district court may dismiss the complaint or claim.” *Vess v. Ciba–Geigy Corp. USA*, 317 F.3d 1097, 1107 (9th Cir. 2003). This Court should dismiss the Complaint under Rule 9(b) to avoid “squander[ing] enormous judicial resources resolving complex (and arguably novel) questions where nothing in Plaintiff[s]’ submissions give the Court any assurances that this is not a ‘fishing expedition for the discovery of unknown wrongs’ of the precise

sort that Rule 9(b) is designed to smoke out.” *California ex rel. Heryford v. Citigroup Inc.*, No. 216CV00469TLNEFB, 2018 WL 3197905, at *2 (E.D. Cal. June 26, 2018) (quoting *Verizon Delaware, Inc. v. Covad Commc 'ns Co.*, 377 F.3d 1081, 1092 (9th Cir. 2004).

Argument

I. The Court should dismiss this Complaint under Rule 9(b).

“A motion to dismiss a complaint or claim ‘grounded in fraud’ under Rule 9(b) for failure to plead with particularity is the functional equivalent of a motion to dismiss under Rule 12(b)(6) for failure to state a claim.” *Vess*, 317 F.3d at 1107. Thus, as in the Rule 12(b)(6) context, this Court should assume the truth of well-pleaded factual allegations in the Rule 9(b) context. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009). That assumption does not apply to “legal conclusions” or “conclusory statements.” *Id.* Even under Rule 8(a)’s less-demanding standard, “only a complaint that states a plausible claim for relief survives a motion to dismiss.” *Id.* at 679. And “where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—‘that the pleader is entitled to relief.’ ” *Id.* (quoting Fed. Rule Civ. Proc. 8(a)(2)).

“But Rule 9(b) clearly imposes an *additional* obligation on plaintiffs: the statement of the claim must *also* aver with particularity the circumstances constituting the fraud.” *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541, 1547 (9th Cir. 1994). “Rule 9(b) requires particularized allegations of the circumstances *constituting* fraud.” *Id.* “To satisfy Rule 9(b), a pleading must identify the who, what, when, where, and how of the misconduct charged[.]” *Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011); *see also Donohue v. Bd. of Elec. of State of N.Y.*, 435 F. Supp. 957, 966 (1976) (“It is necessary, first of all, to plead and prove specific acts of misconduct, including the time, place and circumstances of the alleged deprivation of the right to vote.” (Citing Fed. R. Civ. P. 9(b))).

Rule 9(b) serves not only to give notice to defendants of the specific fraudulent conduct against which they must defend, but also ‘to deter the filing of complaints as a pretext for the discovery of unknown wrongs, to

1 protect [defendants] from the harm that comes from being subject to fraud
 2 charges, and to prohibit plaintiffs from unilaterally imposing upon the court,
 3 the parties and society enormous social and economic costs absent some
 4 factual basis.’

5 *Bly-Magee v. California*, 236 F.3d 1014, 1018 (9th Cir. 2001).

6 To start, Plaintiffs’ Complaint asserts alleged “violations” of Arizona elections law.
 7 (Doc. 1, ¶¶ 48–53). Notably, none of Plaintiffs’ declarants allege fraud. (*See id.*; *see also*
 8 Doc. 1-10 at 18–40 (Exhs. 20–23)). They are the only declarants offered by Plaintiffs with
 9 any first-hand observation of Maricopa County’s election administration. The allegation
 10 that “[t]he [voting] machines make determinations on what ballots to invalidate or validate
 11 based on an algorithm that operates offshore before tallying the votes locally,” does not
 12 find support in the declaration. (*Compare* Doc. 1, ¶ 49 *with* Doc. 1-10 at 18–24). At most,
 13 these declarants offer perceived irregularities with election administration. (Doc. 1-10 at
 14 18–40).

15 Plaintiffs next offer allegations based on “expert witness testimony.” (Doc. 1, ¶¶
 16 54–62). These allegations do not plead with particularity the circumstances constituting
 17 the alleged fraud. For example, the Briggs Report comes to the conclusion that over
 18 300,000 Arizona ballots are “troublesome” based on an unexplained methodology applied
 19 to a multi-state phone survey—the “Braynard survey” with its own methodology that no
 20 declarant explains and for which the Briggs Report does not vouch. (*See* Doc. 1-2 at 14–
 21 17 (“I assume survey respondents are representative and the data is accurate.”); *see also*
 22 Doc. 1-2 at 52 (providing tweets from Braynard instead of a signed declaration that does
 23 not address the “survey,” but appears to address the alleged out-of-state voters)). Further,
 24 the allegations in this section are filled with qualifiers—“indicative of voter fraud,”
 25 “predictive model”—and **fail to identify any defendant** that committed the alleged fraud.
 26 The allegations merely assert that certain ballots “*could have* been filled out by anyone
 27 and then submitted in the name of another voter,” “*could be* filled in by third parties to
 28 shift the election to Joe Biden,” “were either lost or destroyed (consistent with allegations

1 of Trump ballot destruction)^[1] and/or were replaced with blank ballots filled out by
 2 election workers, Dominion or other third parties.” (Doc. 1, ¶¶ 54–58 (emphasis added);
 3 *see also* Doc. 1-4 at 1–17 (analysis of “momentum” based on alleged voter registration
 4 trends)).

5 Similarly, the allegations based on the Ramsland Report produce qualifiers instead
 6 of particularity: “*likely* fraudulent”; “*could* have been manufactured,” and—the best of the
 7 bunch—“*possibly* impossible.” (See Doc. 1, ¶¶ 59–60 (emphasis added)). And Ramsland’s
 8 analysis is based on his subjective expectation of voter behavior at the precinct level, not
 9 first-hand evidence of voter fraud.

10 Taken together, the Briggs Report, Ramsland Report, and Braynard tweetstorm
 11 conjure a number of “illegal votes” out of thin air. These fantastic allegations have no
 12 connection whatsoever to any allegation made by the Arizona-based declarants. These
 13 reports cannot satisfy Rule 9(b).

14 Finally, the bulk of Plaintiffs’ allegations attack the integrity of Dominion Voting
 15 Systems, one of Maricopa County’s voting equipment vendors. (See Doc. 1, ¶¶ 63–102;
 16 *see also id.* at ¶¶ 5–13)). These attacks are largely based on conspiracy theories in
 17 unsigned,² redacted declarations. (See, e.g., Doc. 1-2 at 5–12; Doc. 1-3 at 2–6; Doc. 1-5
 18 at 1–56). They also draw on observations about Dominion voting equipment in other states
 19 without any allegation that Maricopa County uses the same equipment or that the County’s
 20 elections officials committed fraud in this or any other election. (See, e.g., Doc. 1-4 at 48–
 21 50; Doc. 1-3 at 23–69). Plaintiffs brazenly attempt to justify their flouting of Rule 9’s
 22

23 ¹ Note: the Complaint does not appear to substantiate this conclusory allegation about
 24 ballot destruction at any point with a citation to any of the more than 300 pages of exhibits.

25 ² Courts routinely reject the sufficiency of unsigned declarations. See, e.g., *West v.*
 26 *Higgins*, 346 F. App’x 423, 426 (11th Cir. 2009) (“Federal law does provide an alternative
 27 to making a sworn statement, but requires that the statement include a handwritten
 28 averment, signed and dated, that the statement is true under the penalties of perjury.”);
Alleva v. New York City Dep’t of Investigation, 696 F. Supp. 2d 273, 278 (E.D.N.Y. 2010)
 (“[T]he lack of a signature renders [the declarations] invalid under 28 U.S.C. § 1746, which
 requires the signature of the declarant.”).

1 requirements by telling this Court that the system is set up to make fraud undetectable.
 2 (*See, e.g.*, Doc. 1, ¶ 8.) But that is not how Rule 9 works.

3 All told, Plaintiffs' Complaint does not "state with particularity the circumstances
 4 constituting fraud." *See* Fed. R. Civ. P. 9(b). At most—and it is surely a stretch—the
 5 Arizona-based declarants have alleged "garden variety election irregularities." *Griffin v.*
 6 *Burns*, 570 F.2d 1065, 1076 (1st Cir. 1978).

7 The federal court is not equipped nor empowered to supervise the
 8 administration of a local election. If every election irregularity or contested
 9 vote involved a federal violation, the court would be thrust into the details of
 10 virtually every election, tinkering with the state's election machinery,
 11 reviewing petitions, registration cards, vote tallies, and certificates of
 election for all manner of error and insufficiency under state and federal
 law."

12 *Id.* at 1077.

13 Here, Plaintiffs request the extraordinary relief of decertifying Arizona's election
 14 by claiming "fraud" but fail to offer *any* evidence to support their claims. Because "the
 15 pleading could not possibly be cured by the allegation of other facts," *Bly-Magee*, 236
 16 F.3d at 1019, this Court should dismiss with prejudice.

17 **II. The Court should deny the request for preliminary equitable relief.**

18 A movant can obtain preliminary equitable relief as a temporary restraining order
 19 or preliminary injunction by showing that (1) it is "likely to succeed on the merits," (2) it
 20 is "likely to suffer irreparable harm in the absence of preliminary relief," (3) "the balance
 21 of equities tips in [its] favor," and (4) "an injunction is in the public interest." *Winter*, 555
 22 U.S. at 20. A preliminary injunction may also be appropriate if a movant raises "serious
 23 questions going to the merits" and the "balance of hardships . . . tips sharply towards" it,
 24 provided that the movant satisfies the second and third *Winter* factors. *See All. for the Wild*
 25 *Rockies*, 632 F.3d at 1134–35.

26 Here, as explained above, Plaintiffs' woefully deficient Complaint ensures that it
 27 cannot succeed on the merits and does not raise "serious questions going to the merits."
 28 Further, given the purposes that animate Rule 9(a)—"to deter the filing of complaints as

1 a pretext for the discovery of unknown wrongs, to protect [defendants] from the harm that
2 comes from being subject to fraud charges, and to prohibit plaintiffs from unilaterally
3 imposing upon the court, the parties and society enormous social and economic costs
4 absent some factual basis,” *Bly-Magee*, 236 F.3d at 1018—the balance of hardships under
5 these circumstances tips sharply in favor of the Maricopa County Intervenor, not
6 Plaintiffs. The Maricopa County Intervenor will suffer irreparable harm if the Court
7 grants Plaintiffs’ preliminary equitable relief and orders “all servers, software, voting
8 machines, tabulators, printers, portable media, logs, ballot applications, ballot return
9 envelopes, ballot images, paper ballots, and all election materials related to the November
10 3, 2020 Arizona election s[e]ized and impounded for forensic audit and inspection by the
11 Plaintiffs.” (Doc. 2 at 11).

12 First, the County will not be able to perform important post-election tasks,
13 including service and maintenance of the voting equipment and performing accounting
14 and inventory duties. Second, the Maricopa County Intervenor has an upcoming
15 election to administer in March, and the proposed fishing expedition threatens their
16 preparations. All of this together threatens the right of citizens of Maricopa County to
17 exercise their constitutional right to vote. In addition, members of the legislature,
18 including the chairman of the committee with jurisdiction over election procedures, have
19 requested the County to perform an “election day demonstration” of the County’s voting
20 equipment in early to mid-December in order to determine what changes to Arizona
21 election law, if any, should be considered when the time comes to file bills in early
22 January. The order the Plaintiffs request would frustrate the legislators’ important
23 objective to continue to improve elections and voting in Arizona.

24 Moreover, Plaintiffs’ request for access to the software is incongruent with their
25 absurd allegation about “the software’s ability to hide its manipulation of votes from *any*
26 *audit*,” underscoring their Rule 9(b) deficiencies. (See Doc. 1, ¶ 8 (emphasis added)).
27 Under these circumstances, Plaintiffs cannot satisfy *Winter*.

28 //

Conclusion

For these reasons, this Court should dismiss this Complaint under Rule 9(b) and deny Plaintiffs' motion for preliminary equitable relief.

RESPECTFULLY submitted this 4th day of December, 2020.

ALLISTER ADEL
MARICOPA COUNTY ATTORNEY

BY: /s/Thomas P. Liddy

Thomas P. Liddy

Emily Craiger

Joseph I. Vigil

Joseph J. Branco

Joseph E. LaRue

Attorneys for Maricopa County Intervenors

CERTIFICATE OF SERVICE

I hereby certify that on December 4th, 2020, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants on record.

/s/ V. Sisneros

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